



October 23, 2001

Mr. Darrell G-M Noga
Cooper & Scully, P.C.
900 Jackson Street, Suite 100
Dallas, Texas 75202

OR2001-4809

Dear Mr. Noga:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155724.

The City of Coppell (the "City") received a request for documents related to Incident Report No. 01-42838. You claim that the requested information is excepted from disclosure under Government Code sections 552.108 and 552.101 in conjunction with Family Code sections 58.007 and 261.201. We have considered the exceptions you claim and reviewed the submitted information.

First we address your claims under section 552.101. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by statute, and you assert that the information is protected under section 58.007(c) of the Family Code. Juvenile law enforcement records relating to juvenile conduct that occurred on or after September 1, 1997 are confidential under section 58.007. However, section 58.007(c) of the Family Code only pertains to juvenile offenders. Although the submitted information mentions juvenile witnesses, it does not reference any juvenile suspects. Because the requested information does not involve a juvenile offender, section 58.007(c) does not apply to the requested information.¹ You also assert that the requested information is protected

¹We also note that even if the juveniles at issue here were suspects, section 58.007 would still be inapplicable because the juveniles involved are not "children" as defined by section 51.02 of the Family Code. Under that section, a "child" is a person who is "ten years of age or older and under 17 years of age." Here, the ages of the juveniles are three and five.

under section 261.201 of the Family Code. Section 261.201 protects the confidentiality of reports of alleged or suspected child abuse and the reports, records, and working papers used or developed in an investigation of alleged child abuse under Family Code Chapter 261. The information provided here neither indicates that there is a report of child abuse, nor that this investigation is one being conducted under Chapter 261. Therefore, section 261.201 is inapplicable.

Next, we turn to your claim that the requested information is excepted from disclosure under section 552.108. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested offense report relates to a pending criminal investigation. Based upon this representation, we conclude that the release of the offense report would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Although section 552.108(a)(1) authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007. Because section 552.108 is dispositive, we do not address your privacy claim.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

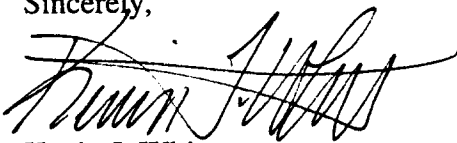
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin J. White", written over a horizontal line.

Kevin J. White
Assistant Attorney General
Open Records Division

KJW/seg

Ref: ID# 155724

Enc. Submitted documents

c: Ms. Birdie Lunsford
304 Park Meadow
Coppell, Texas 75019
(w/o enclosures)